

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
RAMON MARACALLO,

Plaintiff,

-against-

THE CITY OF NEW YORK, POLICE
DEPARTMENT OF THE CITY OF NEW YORK,
P.O. ANTHONY DONATO, SHIELD NO: 7509,
"JOHN DOE #1", SHIELD NO: 2888 and
"JOHN DOE #2", SHIELD NO: 5050,

Defendants.
-----X

Index No.: 350319/11

Date Purchased:

VERIFIED COMPLAINT

Plaintiff, by his attorneys **GETZ & BRAVERMAN, P.C.**, complaining of the Defendants respectfully alleges, upon information and belief:

**AS AND FOR A FIRST CAUSE OF ACTION ON
BEHALF OF PLAINTIFF, RAMON MARACALLO:**

1. That at the time of the commencement of this action, Plaintiff resided in the County of Bronx, City and State of New York.
2. That the cause of action alleged herein arose in the County of Bronx, City and State of New York.
3. That on April 24, 2011, and at all times herein mentioned, Defendant, THE CITY OF NEW YORK (hereinafter referred to as "CITY"), was, and still is, a municipal corporation.
4. Upon information and belief, that at all times hereinafter mentioned, the defendant CITY its agents, servants, employees and/or licensees operated, maintained and controlled the Police Department of the City of New York, including all of the police officers thereof.
5. That a Notice of Claim was filed within 90 days of the occurrence alleged herein.
6. That a 50h Hearing has been requested and conducted in this matter.
7. That this action is commenced within one year and ninety days after the cause of action arose.

8. That on April 24, 2011 and prior thereto, there existed a street and thoroughfare known as and by East Tremont Avenue and Anthony Avenue, in the Borough and County of Bronx, City and State of New York.

9. That on April 24, 2011 and at all times herein mentioned, plaintiff, RAMON MARACALLO was lawfully at, upon or near said location.

10. That on or about April 24, 2011 the plaintiff was lawfully and properly upon, at/or near the aforementioned location at which time the defendants then and there were at as a part of their regular and official employment as police officers,

11. As the plaintiff was lawfully and properly thereat, said police officers who, having the real and apparent ability to cause imminent harmful and offensive contact, the power and authority to arrest and imprison the plaintiff did so threaten these acts upon the plaintiff, who after continuing his lawful activity, was intimidated and humiliated.

12. That the aforesaid occurrence and results thereof were due solely and wholly by reason of the negligence, carelessness and recklessness of the defendants, their agents, servants, employees, licensees, designees and/or representatives in the ownership, operation, maintenance, management, supervision, charge and control of the aforesaid location and personnel thereat; in failing to act in a professional, skillful and prudent manner; in failing to adhere to commonly accepted standards, guidelines and/or practices in connection with investigating a matter and in dealing with and/or questioning individuals; in causing, permitting and allowing the plaintiff to be intimidated and threatened; in causing, allowing and permitting the plaintiff to be strip-searched in the street with all accompanying indignities inherent thereto; in failing to adhere to commonly accepted standards, guidelines and/or practices as concerns hiring techniques; in failing to properly and adequately monitor, instruct, oversee, supervise, train and/or proctor their personnel; in using excessive force and intimidation; in failing to act in a professional and prudent manner; in causing, allowing and permitting a situation to escalate as opposed to quelling same, and in demonstrating indifference and willful disregard as to the safety and well-being of others.

13. Immediately thereafter, aforementioned defendants, their agents, servants, employees and/or licensees falsely arrested and imprisoned the plaintiff, and deprived him of his rights and liberties as set forth in the Constitutions of the United States and of the State of New York, handcuffed to, and threatened the plaintiff the possible use of firearms and weapons and the use of physical force; in that they continued to imprison him without any conduct on the part of the plaintiff do so warrant to wit:

a) In that all of the actions of the defendants, their agents, servants and employees, were committed with the intention to cause bodily and mental injury to the plaintiff, to arrest, restrain and imprison the plaintiff without his consent, the plaintiff was at all times conscious of his arrest, did not consent to the false arrest and imprisonment were not otherwise privileged; and,

b) the arrest and imprisonment were not justified by probable cause of other legal privileges, defendants, their agents, servants and employees, acting under the color of statute, ordinances, regulations, customs and usages of the State, City and County of New York, and under the authority of their office as police officers for said City, falsely charged the plaintiff with the following sections of the Penal Law although the defendants, acting in such capacity, knew that such charges were false:

c) that the defendants, their agents, servants, employees and/or licensees caused the plaintiff to be threatened without her consent and with the intention of causing harmful and/or offensive bodily contact to the plaintiff, all without warrant, probable cause or any lawful cause whatever; and,

d) that the defendants, their agents, servants, employees failed to adequately and properly hire, retain, train, supervise, discipline or in any other way control the behavior and performance of the defendants, their agents, servants and employees; that in their hiring practices in the exercise of their police functions and their failure to enforce the laws of the State and City of New York is evidence of the reckless lack of cautious regard for the rights of the public including

the plaintiff; in that they exhibited a lack of that degree of due care which prudent and reasonable individuals would show in executing the duties of the defendants; and,

e) the failure of the defendants, their agents, servants and employees to hire, train, supervise, discipline or in any other way control the defendants, in the exercise of their functions; in that their failure to enforce the laws of the State of New York and the City of New York was and is carried out willfully, wantonly, maliciously and with such reckless disregard for the consequences so as to display a conscious disregard for the dangers of harm and injury to the citizens of the State and City of New York including the plaintiff; and,

f) due to the acts of the defendants, their agents, servants and employees herein the failure of the City of New York to discipline and properly hire the defendants and the continued employment of the defendants presents a clear and present danger to the citizens of the City and State of New York.; and,

g) that the said prosecution and criminal charges and hearings were instituted and procured by the defendants, their agents, servants and employees in this action unlawfully and maliciously and without any reasonable or probable cause whatsoever therefor. That the commencement and/or continuation of the criminal proceedings by the defendants against the plaintiff was without probable cause with actual malice and was terminated in favor of the plaintiff; and,

h) that the defendants, their agents, servants and employees permitted the use of policy and/or drafted policy that was violative of the Constitutional rights of the above named plaintiff; and in that each and all of the acts of the defendants, their agents, servants and employees alleged herein were done not as individuals but under the color and pretense of the statutes, ordinances, regulations, customs and usages of the State of New York, the City of New York and the County of Bronx, and under the authority of their office as police officers for said City and County.

14. Defendants did not have probable cause to pursue or arrest and search RAMON

MARACALLO either before or at the time and deprived him of his Constitutional rights as set forth in the Constitution of the United States, particularly 42 U.S.C. Sec. 1983 and the Constitution of the State of New York.

15. As a direct result of the illegal actions and conduct on the part of the defendants, their agents, servants and employees the plaintiff was falsely arrested and imprisoned, maliciously prosecuted and compelled to be arraigned and appear in Criminal Court in the City of New York, County of Bronx and to undergo a criminal proceeding in Court.

16. That at all times hereinafter mentioned, the defendants were employed in their respective capacities by the defendant, CITY, and were acting under the color of their official capacity and their acts were performed under the color of the policies, statutes, ordinances, rules and regulations of the City of New York.

17. That at all times hereinafter mentioned, the police officers were acting pursuant to orders and directives from defendant, CITY.

18. That during all times hereinafter mentioned, the police officers and each of them, separately, and in concert, acted under color and pretense of law, to wit: under color of the statutes, ordinances, regulations, customs and usages of the City of New York and the defendants here, separately and in concert, engaged in the illegal conduct herein mentioned to the injury of the plaintiff and deprived plaintiff of the rights, privileges and immunities secured to plaintiff by the First and Fourteenth Amendments to the Constitution of the United States and the laws of the United States.

19. The police officers of the defendant, CITY, and its individual members who are agents, servants and employees of defendants, together with persons unknown to plaintiff acting under color of law, have subjected the plaintiff and other persons to a pattern of conduct consisting of illegal harassment, false imprisonments and arrests and malicious prosecution at the time said persons who are lawfully and properly on the public streets, highways or thoroughfares partaking in

peaceful activities and who are in denial of rights, privileges and immunities guaranteed plaintiff and other citizens by the Constitution of the United States.

20. This systematic pattern of conduct consists of a large number of individual acts of violence, intimidation, false arrest and false imprisonment and malicious prosecution visited on plaintiff and other citizens by members of the police department of defendant, CITY, acting in concert with persons unknown to the plaintiff and under color of law and said acts, while carried out under color of law, have no justification or excuse in law and are instead illegal, improper and unrelated to any activity in which police officers may appropriately and legally engage in the course of protecting persons or property or ensuring civil order.

21. Although defendants knew or should have known of the fact that this pattern of conduct was carried out by their agents, servants and employees, the defendant, CITY, has not taken any steps or made any efforts to halt this course of conduct, to make redress to the plaintiff or other citizens injured thereby, or to take any disciplinary action whatever against any of their employees or agents.

22. The unlawful and illegal conduct of the defendants, their agents, servants and employees and each of them, deprived plaintiff of the following rights, privileges and immunities secured to her by the Constitution of the United States and of the State of New York.

a) The right of plaintiff to be secure in his person and effects against unreasonable search and seizure under the Fourth and Fourteenth Amendments to the Constitution of the United States, and,

b) The right of plaintiff to be informed of the nature and cause of the accusation against him as secured to him under the Sixth and Fourteenth Amendments to the Constitution of the United States; and,

c) The right of plaintiff not to be deprived of life, liberty or property without due process of law, and the right to the equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States.

23. That by reason of the aforesaid violations, false arrest and false imprisonment, malicious prosecution caused by the defendants, their agents, servants and employees who conspired together to enter into a nefarious scheme to wrongfully deprive the plaintiff and compel him to

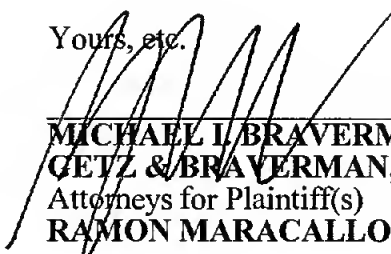
abandon his rights and privileges as provided to him in the Constitution of the United States of America, and provided to him in the Constitution of the State of New York, and laws thereto, the defendants, their agents, servants and employees violated U.S.C. Sec. 1983 in that the defendants, their agents, servants and employees acted as persons who under color of any statute, ordinance, regulation, custom or usage of the City of New York, subjected or caused to be subjected, a citizen of the United States or other persons within the jurisdiction, particularly the plaintiff thereof to be deprived of his rights, privileges or immunities received by the Constitution and laws of the United States of America and of the State of New York; was subjected to great indignities and humiliation, and distress of mind and body and was held up to scorn and ridicule, injured in his character and reputation, was prevented from attending his usual business and vocation and was injuries in his reputation in the community and the acts aforementioned were committed with the aim of injuring and damaging the plaintiff.

24. That by reason of the aforesaid intentional false arrest, false imprisonment, malicious prosecution and deprivation of his rights and liberties as guaranteed by the aforementioned Constitutions, by the defendants, their agents, servants and employees, acting within the scope of their authority, and without any probable or reasonable cause, the plaintiff suffered great injury to mind, and he was otherwise damaged.

WHEREFORE, Plaintiff(s) demand(s) judgment against the Defendants herein, in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with the costs and disbursements of this action.

Dated: Bronx, New York
February 18, 2012

Yours, etc.


MICHAEL I. BRAVERMAN, ESQ.
GETZ & BRAVERMAN, P.C.
Attorneys for Plaintiff(s)
RAMON MARACALLO

172 East 161st Street
Bronx, New York 10451
(718) 993-3000
Our File No. 8099

PLAINTIFF'S VERIFICATION

STATE OF NEW YORK)

SS:

COUNTY OF BRONX)

Ramon Maracallo

, being duly sworn, deposes and says:

I am the PLAINTIFF in the within action. I have read the foregoing *Summons and complaint* and know the contents thereof and the same is true to my own knowledge, except as to those matters stated upon information and belief and as to the matters I believe them to be true.

Sworn before me this

18th day of Feb., 2012

x Ramon Maracallo
Ramon Maracallo

NOTARY PUBLIC

MICHAEL I. BRAVERMAN
NOTARY PUBLIC

CITY OF NEW YORK 026R0035120
CERTIFICATE FILED IN BRONX COUNTY
COMMISSION EXPIRES 12-27-2012

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-against-

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SHIELD NO: 2888 and "JOHN DOE #2", SHIELD
NO: 5050,

Defendants.

SUMMONS AND VERIFIED COMPLAINT

GETZ & BRAVERMAN, P.C.

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